Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 250 of 2003

U.P. State Road Transport Corporation
Through its Regional Manager,
Kumaon Region, Nainital.

… **Appellant.**

Versus

1. Smt. Asha Chandra, W/O late Sri Kharak Chandra
2. Km. Renu D/O late Sri Kharak Chandra,
3. Ravindra S/O Late Sri Kharak Chandra,
4. Pawan S/O Late Sri Kharak Chandra,

Respondent Nos. 2 to 4 through their natural Guardian i.e. Mother Smt. Asha Chandra,
All residents of village Bhood Maholiya (Lohiya Bridge), Tahsil and P.S. Khatima,
District Udham Singh Nagar.

… **Respondents.**

Sri G.B.Pande, Advocate, learned counsel for the respondents.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 09, 2004.

(Per Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (***in short the Act*** **)** against the judgment and award, dated 9-6-2003 passed by the Motor Accident Claims Tribunal/District Judge, Udham Singh Nagar ***(in short the Tribunal)*** whereby compensation of Rs. 8,01,240/- along with interest @ 10% per annum has been awarded against the appellant. Aggrieved, the U.P.S.R.T.C. has come up in appeal.

Kharak Chandra, aged 44 years, and earning Rs. 9,860/- per month, lost his life as a result of fatal injuries sustained by him in a motor vehicle accident on 23.4.2002 at 9 p.m. According to the claimants accident occurred due to rash and negligent driving by the

driver of UPSRTC bus No. UP-02A-4315, which hit the motor cycle driven by Kharak Chand, ***the deceased.*** He sustained grievous injuries and was admitted to Community Health Centre, Khatima, and was later-on referred to Bareilly, where he succumbed to his injuries on 30-4-2003. Hence the claim petition was preferred by his legal heirs/dependents claiming compensation of Rs. 23,80,320/-.

The appellant contested the petition by raising the plea that the deceased himself was driving the motor cycle rashly and negligently, and that it dashed against the bus, therefore, the claimants were not entitled to compensation.

On the pleadings of the parties, learned Tribunal framed relevant issues. Ultimately, the Tribunal held that the accident resulting into grievous injuries and consequent death of the deceased occurred due to rash and negligent driving by the driver of the bus belonging to the appellant. It further held that the claimants were entitled to compensation of Rs. 8,01,240/- and accordingly, decreed the claim petition along with interest @ 10% per annum.

In support of appeal, it was contended that the accident occurred due to natural disaster, therefore, the finding of the learned Tribunal regarding rash and negligent driving by the driver of the bus was erroneous; that the claim petition was not maintainable for non-joinder of the owner of motor cycle and that learned Tribunal erred in not framing an issue on the point of contributory negligence. As against this, learned counsel for the respondents submitted that the impugned judgment and award was based on proper appraisal of the evidence and the compensation amount is just and proper.

The first contention of the appellant that the accident occurred due to natural disaster is misconceived. The appellant produced driver of the offending bus, Janardan Sharma, as D.W.1. This witness nowhere stated that the accident occurred due to vis-

major, rather he took the stand that it happened on account of rash and negligent act of the deceased motorcyclist. Moreover, the witness admitted in the cross-examination that a case under Sections 279/304-A IPC was pending trial against him in criminal court. In his testimony, D.W.1 has not explained as to why he was charge-sheeted, had there been no overt act on his part.

The next contention of the appellant that the petition was bad for non-joinder of owner of the motor-cycle is also not tenable. There is clear-cut finding of the Tribunal that the driver of the bus escaped from the scene of accident along with the bus. The finding is supported by the testimony of an independent and eye witness P.W.3, Shamsher Chandra. This witness was cross-examined by the appellant, but nothing favourable to the appellant could be brought on record. In the circumstances of the case, when the driver of the offending bus was charge-sheeted for his negligent act, no prejudice was caused to the appellant on the point. Moreover, record revealed that the deceased himself was the owner of the motor cycle, therefore, no question arose to implead the owner or insurer of the motor-cycle as party in the proceedings.

As regards contention of the appellant that there was contributory negligence, it is strange enough that no such stand was taken neither in the written statement, nor there was an iota of evidence led by the appellant to that effect. The appellant, as mentioned earlier, took the stand that the accident occurred due to natural disaster. In view of the clear admission of the driver (D.W.1) that charge-sheet was submitted against him by the police and the case was pending decision in a criminal court, we are not inclined to accept that there was contributory negligence on the part of the deceased. Plea of contributory negligence was taken at the appellate stage with a view to reduce the liability towards compensation.

Although the appellant has contended in memo of appeal that the deceased was not having a valid driving licence, but no such stand was taken by the appellant in its written statement. The appellant failed to indicate any such evidence on record that the deceased also contributed to the accident, therefore, it was not at all relevant for the learned Tribunal to record a finding whether or not the deceased was having a valid driving licence. It was not a case of the appellant that the deceased was not having a valid driving licence.

Lastly, the appellant contended that neither there was any proof of income of the deceased nor any certificate of income on record, hence the compensation determined by the Tribunal is without any basis. This contention is not acceptable because the claimants have filed certificate of pension issued by the State Bank of India Khatima (paper no. ***11-C/8)***, which shows that the deceased was getting sum of Rs. 3,077/- per month as pension vide P.P.O. No. S/039328/94. Salary Certificate (***11-C/9)*** dated 14.8.2002 issued by Manager (Finance) shows that the deceased Kharak Chandra was employed as Field Supervisor on contract in Udham Singh Nagar, Dugdh Utpadak Sahakari Sangh Ltd. and was getting salary of Rs. 5,000/- per month. The income of the deceased was not controverted by the appellant by any evidence, therefore, the learned Tribunal has rightly considered these certificates for determining the compensation amount. Having considered the entire material on record, we do not find any material favourable to the appellant, so as to warrant interference by this Court.

In view of the discussion aforesaid, we are of the opinion that the learned Tribunal has committed no illegality or infirmity in awarding compensation of Rs. 8,01,240/- against the appellant. The appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal is upheld.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal Udham Singh Nagar, for being paid to the claimants.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

RCP